IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/02/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 13415 of 1997
and
W.P.M.P.No. 21531 of 1997

Srinivasamurthy, (Minor),
represented by next friend and
guardian K.N. Raghavendra Rao,
12, I Main Road, Balaji Nagar,
Anakaputtur, Chennai-70. .. Petitioner.

-Vs-

1. State of Tamil Nadu,
represented by its Secretary,
Public (Electricity) Department,
Madras-9.

2. The Chairman,
Tamil Nadu Electricity Board,
Chennai-2.

3. The Assistant Engineer,
Tamil Nadu Electricity System,
Pammal, Chennai. .. Respondents.

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, as stated therein.

Mr. C.L. Vijayaraghavan:- For petitioner.

Mr. G. Vasudevan for T.N.E.B.:-For Respondents.

Mr. O. Venkatachalam:- Arbitrator.

:ORDER

The petitioner, who is a minor, has filed the above Writ Petition through his father claiming compensation of Rs.10 lakhs for the injuries,

mental agony and sufferings undergone by him on account of the electrocution which took place on 11-12-95 at about 1.3 0 P.M. at Door No.7, Vasudevan Street, Pasumpon Nagar, Pammal, Chennai-75. Considering the grievance expressed and in the light of the factual details referred to, this Court on 14-10-99 appointed one Mr. Mohamed Khan, retired District Judge as an Arbitrator to consider the claim of the petitioner and the defence taken by the respondentElectricity Board. In the said order of reference, this Court directed the Arbitrator to submit an award with regard to the negligence aspect and quantum of compensation payable to the petitioner. Pursuant to the direction, both parties participated in the arbitration proceedings. The arbitrator Mr. Mohamed Khan, after observing all formalities, examined P.Ws.1, 2, 3 and 4 and recorded their evidence on different dates. At that stage, unfortunately the said arbitrator expired. Thereafter, by order dated 8-12-2000, this Court appointed Mr. O. Venkatachalam, retired District Judge as arbitrator to continue the said proceedings from the stage at which the previous arbitrator left the matter and to submit award with respect to the aspects already referred to. It is further seen that after observing all formalities, the present arbitrator examined P.W.5, doctor who treated the petitioner. The petitioner closed his side with P.W.5. On the side of the respondents, one T.V. Perumal, Junior Engineer, Electricity Board, Pammal was examined as R.W.1 and they also closed their evidence. Considering all the materials i.e., oral and documentary evidence, the arbitrator, by an order dated 4-4-2002, submitted a report holding that due to electrocution that too due to negligence on the part of the Electricity Board, the petitioner sustained injuries due to electrocution and on taking note of 100 per cent disability, disfiguration, tender age, etc., he quantified the compensation at Rs.8,00,000/- with interest at 12 per cent per annum from 13-8-96, date of notice till 4-4-20 02 and 18 per cent per annum from that date till the date of payment, and also awarded cost of Rs.5,000/- towards.

2. The only point for consideration in this writ petition is, whether the conclusion holding that Electricity Board alone was negligent for the incident and quantifying the compensation amount to the extent of Rs.8 lakhs are sustainable?

3. It is relevant to point out that when the above writ petition posted for orders on 7-2-2004 pursuant to the report submitted by the arbitrator, learned counsel appearing for Electricity Board by relying on a decision in the case of Tamil Nadu Electricity Board v. Sumathi, reported in 2000 AIR SCW 1717, would contend that appointment of arbitrator to go into the incident is not maintainable and prayed for dismissal of the writ petition. In this regard, it is relevant to refer that when this Court considering the factual assertion and other prima facie material inclined to appoint an arbitrator on 14-10-99, no such objection was raised by the respondents. Even after appointment of Mr. Mohamed Khan, a retired District Judge to go into the claim, the Electricity Board not only did not raise objection but also not challenged the said order by way of an appeal. On the other hand, they participated in the proceedings before the arbitrator without any hesitation and examined their Junior Engineer as their witness to highlight their defence. In such a circumstance, I am of the view that the judgment relied on by the respondents first of all is subsequent order of this Court dated 14-10-99 and in any

event, in view of the conduct of the respondents in not challenging the appointment and participating in the said proceedings they are estopped from challenging the same.

4. Now I shall consider whether the finding of the arbitrator on the negligence aspect and quantum determined are acceptable or any modification is required?

5. First I shall deal with the finding regarding negligence. The arbitrator has framed two points:- (1) Whether the accident mentioned by the claimant has occurred in the manner as alleged by the claimant/petitioner? and (2) Whether there is negligence on the part of Tamil Nadu Electricity Board?

6. It is the case of the petitioner that he is residing at No.12, First Main Road, Balaji Nagar, Anakaputhur, Chennai-70. In the year 1995, he was studying 7th Standard in Sri Sankara Vidyala, Pammal, Chennai-25. On 11-12-95 at about 2.00 P.M. while he was playing with his friend Subash on the terrace of the ground floor bearing Door No.7-A, Vasudevan Street, Pasumpon Nagar, Pammal, Chennai, when he attempted to catch the ball from falling outside, he came into contact with live high tension electric conductor which was hanging and passing close to the parapet wall. Therefore, he was thrown out due to electrocution and fell down on the parapet wall. Immediately he became unconscious and thereafter, he was rushed to General Hospital, Chennai. For several months he was given treatment in the said hospital. Subsequently he was also given treatment in the Ramachandra Medical College and Research Institute, Porur. It is his claim that due to negligence on the part of the Tamil Nadu Electricity Board in positioning High Tension wire (11 K.V) such gruesome accident took place. On the other hand, it is the case of the respondents that the live wires were laid in the year 1987 as per the Electricity rules. The said house was constructed subsequently in violation of the provisions of the Indian Electricity Act without proper building plan, the span length and the sag are within the permissible limit. It is only due to the negligence and the carelessness on the part of the owner of the building and the petitioner, the incident occurred and there was no negligence on the part of the Electricity Board.

7. The father of the claimant, who was examined as P.W.1, narrated the incident. P.W.2, one Mari Ammal, who is living in a house about 30 feet away from the occurrence place and who actually witnessed the occurrence also narrated the accident. Photographer, who had taken photos of the occurrence place, the elevation and lay out of the street, was examined as P.W.3. Apart from these witnesses, two more witnesses were examined on the side of the petitioner. The Junior Engineer attached to Pammal Electricity Board was examined as R.W.1. The learned arbitrator discussed the evidence let in by both side in detail and found that at the time of the occurrence near the house where the unfortunate incident happened, there was sagging of high tension wire and after the occurrence the Electricity Board has set right the same by erecting a new pole to avoid continuance of sagging because on account of such sagging P,.W.4 was dragged and thrown out being caused multiple injuries. (Emphasis supplied).
With the said finding, the arbitrator has concluded that it was only due to

the negligence on the part of the Electricity Board, electrocution has occurred and on account of electrocution P.W.4 has sustained injuries in the manner as stated by him. I concur with the said conclusion. It is also relevant to note that having come to know about the occurrence immediately after the occurrence, the officials of the Electricity Board set right sagging and the lines. It is also relevant to note that after the receipt of the notice dated 13-8-96, the Electricity Board has not given any reply repudiating the contents thereof. Accordingly, I concur with the finding of the arbitrator on negligence aspect.

8. Regarding quantum, though the petitioner has filed a claim before the arbitrator for Rs.18,80,600/- on different heads, has restricted his claim to Rs.10 lakhs. It is seen from the evidence of P.W.4, injured himself that on account of the accident, his right hand was amputated and small toes of both legs, left thigh, stomach, left side fact including eye, mouth, nose and chin were affected. He could not attend the school for the academic years 1995-96 and 19 96-97 because of the said accident. From June, 1997-98 re resumed his studies. P.Ws.1, 2 and 5 corroborated the evidence of P.W.4 regarding the damage of his body. He had taken treatment for about 3 months in the General Hospital and thereafter for about 15 days from Ramachandra Medical College and Research Institute, Porur where he was also subjected to plastic surgery. Ex.P-18 summary of the treatment, M.O.1 photos, M.O.2 discharge summary, M.O.3 certificate issued by P.W.5 and M.O.4 case sheet, bear testimony regarding the nature of treatment given to him. Regarding injuries, the evidence of P.W.5 is more valuable. According to him, P.W.4's right hand was amputated and he was operated on his left thigh. Skin grafting was done. He further stated that after improving his general condition with adequate blood, he was taken up for surgical reconstruction, they harvested skin graph from the right thigh to cover the raw area on the left thigh and left side of the face. As there was partial or marginal loss of graph, he was taken up again for re-graphing of the skin. They found that there was deep involvement of bones especially on the toes of both legs except great toes which were also partly involved. The gangrenous parts of the toes in both feet were removed. Four toes were removed from the left foot. In the right foot two toes were removed and the tip of the remaining toes also were removed. Split skin graphs were done to the affected toes. Surgery was taken up to remove the nonviable skull bone-outer plate. Left eyelid was also corrected with skin graph. Left pinna also was operated with primary closure of the wound. Left shoulder, anterior abdominal wall and both the feet were covered with skin graph and he was found to have marginal raw areas due to partial loss of the graph over the shoulder and scalf which was corrected by plastic surgery-scrapping. P.W.5 has also found the following injuries on the petitioner/claimant:-

1) Post electrical burns on the left side of the face with charring.
2) Charring on the left thigh due to electrical burns.
3) Post electrical burns on anterior abdominal wall.
4) Post electrical burns on the right upper limb with exposed bones due to scar due to high voltage.
5) Post electrical burns involving both feet and toes.
6) Post electrical burns on the left shoulder.

P.W.5 assessed the disability to the extent of 100 per cent which is partial and permanent. As rightly observed by the arbitrator, the above details would categorically prove the magnitude of deformity, disability, mental agony, pain and sufferings undergone by the petitioner.

9. The various certificates, namely, Exs. P-1 to P-1 3 would show that the petitioner was a good sportsman and with the disability hereafter he cannot be a sportsman. As rightly argued, he could not move in the public freely. Exs. P-14, A-15 and A-17 photos would depict the magnitude of the deformity. He also lost matrimonial prospects. After analysing the oral and documentary evidence, the arbitrator has opined that the petitioner is physically unfit to earn income and he is the walking corpse and he has become a wreak. Though the petitioner has claimed Rs.5,00,000/- towards permanent disability, the arbitrator has fixed Rs.3,00,000/-. Considering the evidence of the doctor, his assessment and disability certificate (100 per cent), I am of the view that the petitioner would be entitled a sum of Rs.1,00,000/- towards permanent disability. As against the claim of Rs.3,00,000/- towards physical pain and suffering, the arbitrator has fixed Rs.1,00,000/-. The petitioner has also claimed Rs.2,00,000/- for disfiguration. I verified the medical records, period of treatment, and the surgeries undergone. His one side of the face has been completely damaged. He lost his right hand, and small toes on both legs. His abdomen and left thigh were affected, his eyes are half closed; accordingly I grant a sum of Rs.1,00,000/- towards pain and suffering, disfiguration, loss of comforts etc.

10. The petitioner has claimed Rs.5,00,000/- towards loss of earning capacity. The materials placed would clearly show that as on date he is physically handicapped. He cannot earn with the help of limbs. The doctor has assessed his disability to the extent of 100 per cent. Considering the same, I am of the view that ends of justice would be met by granting another Rs.1,00,000/- towards loss of earning capacity. While disagreeing with the various amounts granted by the arbitrator, after going through the entire evidence, particularly the evidence of the injured petitioner-P.W.4, doctor-P.W.5, amputation of right hand, permanent disability to the extent of 100 per cent, disfiguration and injuries in other parts of the body, I am satisfied that a sum of Rs.3,00,000/- would meet the ends of justice. The respondents/Electricity Board is directed to deposit the said amount within a period of Four weeks from the date of receipt of a copy of this order to the credit of the above proceedings before the Registrar General, High Court, Madras, failing which the amount will carry interest at the rate of 9 per cent from the date of filing of the writ petition i.e., 27-8-1997 till date of deposit. On such deposit being made, the entire amount shall be invested in the Indian Bank, High Court Extension Counter, Esplanade Branch, Chennai-104 initially for a period of three years and renewable thereafter. The amount shall be in investment at least for a period of 10 years. During the said period of investment, the petitioner is entitled to withdraw accrued interest directly from the Bank once in six months for his day-to-day expenses. In addition to this, the respondents are directed to pay a sum of Rs.10,000/- to Mr. O. Venkatachalam, Arbitrator, towards his remuneration within a period of Four weeks from to-day.

11. Writ Petition is allowed on the above terms. No costs. Consequently, W.P.M.P.No. 21531 of 97 is closed.

R.B.

Index:- Yes
Internet:- Yes

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